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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3758 OF 2006

Sharad G. Teredesai .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.Nitin Pradhan with Ms.Shubhada Khot for
applicant
Mr.R.Y.Mirza, A.P.P. for State
Mr.Satish Maneshinde for original complainant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15th November 2006

P.C.

. Heard Mr.Pradhan for applicant, Mr.Mirza,
A.P.P. and Mr.Maneshinde for original
complainant.

2. The applicant has been arrested in connection with C.R.No.70 of 2005 registered with G.B.C.B., C.I.D., E.O.W. Unit III, Mumbai. Offences alleged are of cheating and forgery.

3. It is not disputed that the co-accused has been enlarged on bail but the application of the present applicant has been strongly opposed on the ground that he is main accused and brain behind the crime. So also, the further investigations are in progress. The amount involved is more than Rs.3 Crores.

4. Mr.Pradhan learned Counsel appearing for applicant invites my attention to the fact that the applicant has been in custody since August 2005. He submits that his earlier applications for bail either on medical grounds or on merits have admittedly been rejected. Principal reason for rejection of the same is pendency of further investigation. He submits that the investigations are complete and charge sheet was

filed. It is alleged that the applicant was enlarged on anticipatory bail and subsequently the same was cancelled. It is only when the applicant surrendered and was taken into custody that the investigations really commenced. In such circumstances, the applicant continued to be detained in custody. Mr.Pradhan states that barring few occasions, the applicant was not interrogated. All investigations were carried out by the I.O. after he visited the premises of the company and other units. Similarly, the I.O. has interrogated the concerned bank officials and staff of the company as well. There are group companies. M/s.Universal Medicine Pvt.Ltd. is the company with which the applicant was allegedly associated. The investigation into its affairs is also complete. In such circumstances, according to Mr.Pradhan, the order of Additional Sessions Judge, Mumbai dated 14th February 2006 and the reasons recorded therein do not hold good now.

5. Mr.Pradhan submits that the applicant has his version which is also corroborated by some documents. He submits that the applicant has served complainant company for 27 years and was promoted as a Vice-President (Finance). He submits that the applicant was involved in all financial dealings and was representing the company. He enjoyed complete confidence of the Management. It trusted him for more than two decades. The reason for launching criminal proceedings is not clear. He submits that during the course of investigation by the Income Tax authorities, it is revealed that the complainant company has paid several amounts to one Bhayani who was undertaking Hawala transactions. Therefore, it is not as if the complainants are unaware of the amounts which have been handed over from time to time. It is, therefore, erroneous to urge that there were any limits set up for the applicant to withdraw monies. He has invited my attention to pages 268 to 273 of the paper book i.e. copy of the cross examination of

Vinod Rai Narottamdas Bhayani. Mr.Pradhan then invites my attention to page 296 of the paper book and submits that the show cause notice which is issued to the predecessor in title of the complainant company by the Income Tax authorities would demonstrate that diverse amounts were paid including to Mr.Bhayani. He submits that the Auditors' report and other documents are also forming part of the record. In such circumstances and when the co-accused have been enlarged on bail, so also sufficient time being given to the I.O. for further investigation, the application be considered favourably. He submits that subsequent to the orders of this Court and the Sessions Court, much water has flown and merely because the applicant has sought bail on medical grounds earlier, does not mean that he is disentitled for bail on merits.

6. I had on the earlier occasion i.e. on 19th October 2006 specifically recorded the submissions of Mr.Pradhan that the charge sheet

is filed on 25th November 2005. Further investigations are going on as recorded by the learned Sessions Judge in his order dated 14th February 2006. I had also recorded submission of Mr.Pradhan that the prosecution has not moved on a single occasion to seek custody of the applicant for the purpose of interrogation and investigation.

7. Prosecution was given an opportunity to controvert these submissions and other statements in the bail application. Accordingly, an affidavit of Investigating Officer (I.O.) who has been associated with this case through out is filed. I.O. has referred to all earlier proceedings. After referring to them, in para 15, the I.O. states that Arthur Road jail was visited by him in January 2006 for investigation and recording specimen handwriting of applicant. I.O. has pointed out that the amount involved is more than Rs.3 Crores. The complainant has urged that the amount is more than Rs.10 Crores because

several transactions have come to light later on. The complainant as well as I.O. state that on account of long association of the applicant with the company, there are several transactions undertaken. During the course of same payments have been made and amounts deposited or withdrawn from various bank accounts. It is pointed out that though some progress is made in investigations, yet, as far as applicant is concerned, he has hardly given any opportunity for the prosecution to interrogate him. When he was arrested he was immediately hospitalised and, thereafter, has approached this Court for release on medical grounds. This Court had permitted a surgery to be performed and applicant was also given time to surrender. During the course of all this, the applicant could not be interrogated. Similarly, it is pointed out that the applicant is not cooperating at all. He is not appearing and not filing reply in proceedings which are pending for return of property. Thus, he is not cooperating and forcing the

investigating machinery, all through out, to attend the Court from time to time.

8. The facts about applicant's arrest and the investigations have already been noticed by me in my earlier order so also by the Additional Sessions Judge. All events after the order of Additional Sessions Judge and rejection of applicant's earlier bail application on merits or withdrawal thereof in this Court have to be noted. At Exh.3 to the affidavit of I.O. details of Investigations, after filing charge sheet, are set out. It is not as if there is no investigation after the charge sheet was filed on 25th November 2005. The prosecution has termed it as a preliminary charge sheet. The investigations have progressed and it is pointed out that several persons have been questioned. Bank accounts and number of documents have also been seized. The details of the properties including the Row house allegedly belonging to the applicant are also available. The

investigations are going on and the report recording investigations carried out till October 2006, has also been brought to my notice. There is no material placed which would demonstrate that merely because the applicant has been remanded to judicial custody or hospitalised that investigations have been hampered or stalled. The investigations have been conducted and are still going on despite the applicant being allegedly unavailable on account of Ailments. The applicant, it is alleged, is the prime accused. The apprehension is that on account of his association with the company for a long time, it is difficult to unearth the materials to link the applicant with the offences of cheating and forgery. That process is going on.

9. In my view, when it is not shown that the applicant would not be available during the course of further investigation or at the trial, then applicant's request for enlarging him on bail cannot be denied. Applicant has been

detained in custody from August 2005. Charge sheet is filed on 25th November 2005. Applicant had been permitted to avail of medical facilities and also undergo surgery. His physical condition and heart Ailment is not disputed. The application is resisted mainly on the ground of further investigation. In any event, enormity of the amount involved is not something which bars grant of bail straightaway. That is not disputed seriously. These further investigations are going on through out the year. The progress thereof is also set out in the report. The applicant being granted bail does not mean that investigations come to an end. Applicant's request to enlarge him on bail cannot be rejected merely because of pendency of further investigation. Nothing in law has been brought to my notice to support the plea that bail be denied on account of further investigation. Thus, there is no prohibition in law from entertaining the present application. I am of the view that in the present facts and

circumstances the request of the applicant to enlarge him on bail cannot be rejected. More so, when grant of such a request does not thwart or scuttle further investigation. That investigation can continue will also be ensured.

10. Additionally, Mr.Pradhan after seeking instructions states that the applicant is willing to attend concerned police station upon his release, initially daily and later on as directed by this Court. He would not to enter the factory or the office premises of the company. Mr.Pradhan also states that the applicant upon his release would take steps to engage an Advocate or otherwise represent himself at the hearing of the application for return of property. He would take all steps in that behalf expeditiously once released. In my view, there is no apprehension that applicant would tamper with the witnesses or would be unavailable for Trial. His passport is already surrendered to the I.O. and as and when he desires to leave

Mumbai or India, he must take prior permission of trial court. The applicant agrees to abide by other conditions imposed by this Court.

11. In the above circumstances, I am of the view that applicant deserves to be enlarged on bail. At this stage, it is not necessary to go into the rival contentions on the merits of the charges. It is for the applicant to produce such materials to substantiate the pleas recorded above. Similarly, the prosecution version, at this stage being supported by some materials, it would not be proper to decide their evidentiary value. All contentions in that behalf of both sides are kept open. The application is argued by the parties on the point of Further Investigation. That aspect is taken note of and I have ensured applicant's presence for further investigation as well. Hence, the application is granted on the following terms:-

i) The applicant arrested in

connection with C.R.No.70 of 2005 registered with G.B.C.B., C.I.D., EOW, Unit III, shall be enlarged on bail in the sum of Rs.5 lakhs with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer, GBCB, CID, EOW, Unit III daily for a period of three weeks between 11.00 a.m. and 5.00 p.m. and thereafter twice a week on every Thursday and Friday between 11.00 a.m. and 5.00 p.m. till conclusion of trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not

change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on

the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

9. At this stage, both Mr.Pradhan and Mr.Maneshinde state that considering the nature of the offences and Medical condition of the applicant, it would be fair that the trial is expedited. Since all accused are now enlarged on bail, considering the amount involved so also the health of accused, it would be in the interest of justice if the trial in this case is expedited. The concerned Metropolitan Magistrate to endeavour and dispose of this case as expeditiously as possible and in any event by 30th November 2008. Mr.Mirza, learned A.P.P. appearing for prosecution states that the report

of further investigation would be filed as expeditiously as possible and preferably within three months from today. The learned C.M.M. should, in the event, the Court to which such cases are normally assigned being vacant, endeavour to assign the same to some other Court.

(S.C.DHARMADHIKARI, J)